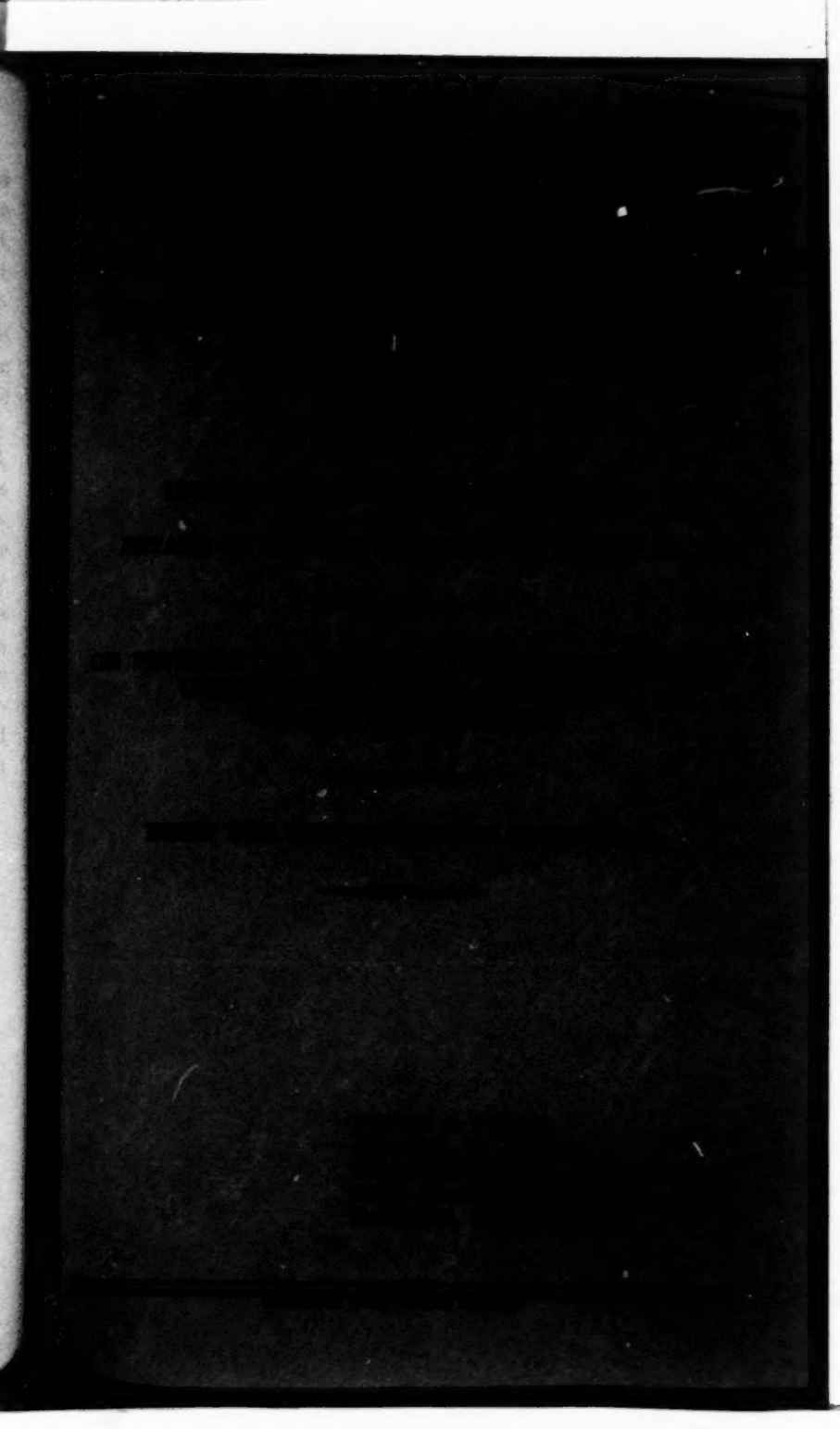

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No. 1380

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

UNITED STATES OF AMERICA, Petitioner
V.
ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Pevos & Pevos (Daniel N. Pevos), on behalf of respondents, Oscar A. Carlson and Genevieve S. Carlson, respectfully oppose the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

QUESTIONS PRESENTED

I.

Whether respondent Carlson, as an innocent purchaser in August 1960 of land in Livingston County, Michigan,

was protected by the tax lien filing requirements of the Internal Revenue Code where notices of tax liens against Donnelly were filed in 1950 only in the office of the Register of Deeds of Wayne County where Donnelly resided and in the office of the Clerk of the local United States District Court, but not with the Register of Deeds of Livingston County, although in 1950 a notice of such tax liens would have also been accepted for filing by Livingston County without the necessity of a legal description.

II.

Whether Carlson, as an innocent purchaser in August 1960, was entitled to the protection of Section 6323(a) of the Internal Revenue Code of 1954 when tax liens assessed in 1950 against Donnelly, individually, did not attach to land in Livingston County acquired in 1949 by Donnelly and his wife as tenants by the entireties until Donnelly's wife died in May 1960, when pursuant to said Section 6323(a) Michigan had in 1956 adopted the Uniform Federal Tax Lien Registration Act and the Government did not file a tax lien notice with the Livingston County Register of Deeds until April 1961 (eight months after Carlson's purchase and eight months before *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, decided December 18, 1961).

STATUTES INVOLVED

In addition to the statutes cited by petitioner, respondents cite Section 6323(a) of the Internal Revenue Code of 1954 which is set forth in Appendix A, *infra*, page 11.

STATEMENT

Petitioner filed a Complaint in the District Court on December 30, 1966 to foreclose an income tax lien assessed in 1950 against Thomas S. Donnelly, Sr. who died in January 1963. Respondents Carlson, whom petitioner concedes

were purchasers in good faith and for value, acquired certain real property in Livingston County, Michigan, from Donnelly in August 1960, sixteen months before the decision in *United States* v. *Union Central Life Ins. Co., supra.*

At the time of the assessments against Donnelly, the Michigan statute providing for local filing of Federal tax lien notices with county Registers of Deeds had been in effect for 27 years. The portion of the statute providing for a description of the land upon which a lien is claimed was not enforced by Registers of Deeds in most counties in Michigan until after a Michigan Attorney General's Opinion issued on September 10, 1953 (No. 1709) and the Government was filing locally under the Michigan statute. In Wayne County, Michigan, where Donnelly resided, the Register of Deeds accepted a standard notice of lien on November 28, 1950 and there is nothing in the Complaint or in the record in the District Court (R. 45a, cited by petitioner on page 4 of its Petition) to indicate that said notice was limited to Donnelly's personal property.

Although petitioner claims that the Treasury Department refused to acquiesce in the Michigan requirement that real property be described in the notice, the Government did acquiesce when it declined to take an appeal of the decision of the United States Court of Appeals for the Sixth Circuit in *Youngblood* v. *United States,* 141 F.2d 912, which in 1944 had upheld the Michigan filing requirements (16 years before respondents Carlson acquired the property involved herein).

REASONS FOR DENYING WRIT

I. The decision below does not conflict with the decision of this Court in *United States* v. *Union Central Life Ins Co.,* supra.

Union Central involved a notice of tax lien filed in the

District Court in 1954 — several months after the September 10, 1953 Michigan Attorney General's Opinion. In *Union Central* the Government stressed the existence of the 1953 Attorney General's Opinion and the parties stipulated "that from the time of that ruling, up to 1956, 'it was the policy of the office of the Register of Deeds for said County of Oakland not to accept for recording notices of Federal tax liens which did not contain a legal description of any land'." (368 U.S. at 293).

The present case is not identical with *Union Central* since the tax lien arose in 1950 — three years before the Attorney General's Opinion. Notice of said lien was accepted on November 28, 1950 by the Register of Deeds in Wayne County, Michigan, where Donnelly resided. The Government waited until March 20, 1961 (R. 4a) to file a notice in Livingston County, Michigan, where the land is located, although it was conceded that in 1950 the notice would have been accepted by the Livingston County Register of Deeds (R. 39a).*

The Complaint also indicates that a similar notice was filed on March 16, 1961 with the Register of Deeds of Genesee County (R. 4a.). Livingston, Genesee and Wayne Counties are in the same federal judicial district. If, as petitioner contends, the filing with the Clerk of the District Court at Detroit on November 29, 1950 was sufficient to perfect the tax lien on all lands owned or subsequently acquired by Donnelly within that judicial district, then there would have been no reason for Internal Revenue

*Although Donnelly did not acquire the property until his wife's death in May 1960, in 1950 the Government, in anticipation of Donnelly's possible future ownership, could have tendered and the Livingston County Register of Deeds would have accepted a standard notice of lien without inquiring into whether Donnelly actually owned property in that County at the time.

Service to file notices in Livingston and Genesee Counties in March 1961. The reason for the 1961 filings was, of course, that the Government had at that time no more indication than did respondents Carlson, the Abstract Company which prepared the Carlsons' abstract of title, or the attorneys who reviewed the abstract, that the 1923 Michigan statute would subsequently be declared by this Court to be invalid with respect to filings after the Michigan Attorney General's Opinion of September 10, 1953.

II. In the trial court and in their brief in the Court of Appeals respondents contended that petitioner failed to file a notice of its tax lien with the Livingston County Register of Deeds after Donnelly's wife died on May 28, 1960. In August 1956 Michigan adopted the Uniform Federal Tax Lien Registration Act (Act 107, P.A. 1956; C.L. 1948 § 211.661 et seq.) the validity of which has never been questioned by petitioner. At no time have respondents Carlson conceded that the lien notice filed in the District Court in 1950 was properly filed. Respondents' position with respect to the failure of the Government to perfect its tax lien in Livingston County after the death of Donnelly's wife (before respondents acquired the real property from him) is based on the clear wording of Section 6323(a) of the Internal Revenue Code of 1954 which was in effect in 1960. The provisions of the 1954 Code, and not those of the 1939 Code, governed the statutory waiver executed by Donnelly in February 1956 extending the time of collection of his tax liabilities for a period of five years. The Government from that time forward was proceeding under the 1954 Code.

It is inconceivable that petitioner should now dispute respondents' contention that the Livingston County prop-

erty was not subject to the tax lien until Mrs. Donnelly's death in May 1960. The non-attachment of the lien to said property was conceded by petitioner in argument before the Court of Appeals. Michigan adheres to the common-law doctrine that in estates by the entireties neither the husband nor the wife alone have an interest capable of being sold, mortgaged, executed upon, taken by a trustee in bankruptcy, or levied upon for the tax liability of one of the spouses. See *United States* v. *Nathanson,* D. C., E. D. Mich., S.D., 60 F.Supp.193 (1945).

The Court of Appeals for the Eighth Circuit in the case of *United States* v. *Hutcherson,* 188 F.2d 326 (1951) in affirming a District Court in Missouri where the common-law tenancy by the entireties is identical to that of Michigan said:

> "Under Missouri law the individual interest of the husband or wife in an estate by the entirety is, like the rainbow in the sky or the morning fog rising from the valley, not such an estate as may be subjected to the grasp of an attaching creditor or which will permit the adherence thereto of a tax lien. We are not at liberty to change the nature of either. The definition of the nature of the Missouri estate by the Missouri courts has become the 'inveterate policy' of the state. *** It is applied by the state courts in determining whether liens arising under state law may attach to the individual interest of either spouse. Uniformly it is held that such liens may not. Not because State or Federal liens are withheld from this particular 'right to property', but because *the interest of one spouse in the estate by the entirety in Missouri is not a right to property or property in any sense.* We may not change the nature of the estate or the interest of one spouse therein for purposes of federal taxation.

> "It is argued that the United States only sought to hold a lien against the husband's possible future interest and that the trial court had no right to defeat that right. *The answer is that the husband had no separate interest to which the lien could* attach ***". (188 F.2d at 331).

The Court of Appeals for the Fifth Circuit reviewing Florida law and citing the *Hutcherson* case, *supra*, as authority held in the case of *United States* v. *American National Bank of Jacksonville*, 255 F.2d 504 (1958), at 507:

> "The husband *** did not have an interest in the subject property during his wife's lifetime to which a lien for Federal taxes, owed by him but not by her, could attach. Upon (the wife's) death the tax lien attached to the property as of the date of her death."

The annotation in 75 A.L.R. 2d 1176 indicates that the courts of Florida, Missouri and Michigan have uniformly rejected attempts of creditors of one spouse, including the Government, to levy upon or to assert any interest in entireties property.

Respondents have never disputed this Court's decision in *Glass City Bank* v. *United States*, 326 U.S. 265, as to the attachment of a federal tax lien to after-acquired property. They concede that the 1950 tax lien *attached* to the Livingston County property *when it was acquired by Donnelly* but it is their contention that the property was not acquired by Donnelly until his wife died in May 1960. The tax lien attached in May 1960, but it was *not perfected* as against purchasers, mortgagees, etc. of Donnelly's Livingston County property under Section 6323(a) of the Internal Revenue Code of 1954, then in force, *until eight months after respondents' purchase* when in March 1961

notice of the lien was first filed with the Livingston County Register of Deeds. Section 6323(a) provided for the proper filing of notice in the office in which property subject to a lien is situated "*whenever* the State or Territory has by law *designated* an office within the State or Territory for the filing of such notice". It is entirely consistent with orderly administration of the collection of revenues to expect the Internal Revenue Service to *perfect a tax lien against after-acquired* property by requiring a filing in a state or county where a delinquent taxpayer does not reside and at some time subsequent to the filing of tax lien notice in his "home" state or county he acquires property for the first time.

The responsibility of the Government to prevent innocent purchasers, etc. from being subjected to the "secret" Federal tax liens is manifested in the filing requirements of the Internal Revenue law enacted by Congress in various and increasingly protective forms since 1913. Although the 1927 West Virginia legislature may have infringed upon Congressional intent by providing for re-filing or existing notices within a four-month period under penalty of declaring same void, the case of *In re Dartmont Coal Co.*, 46 F.2d 455 (C.A. 4) should not be construed as authority for the Government to avoid its obligation to file locally in a county where the delinquent taxpayer does not reside but at some time subsequent to the creation of the Federal tax lien (and after a state has provided for local filing) he acquires real property. Congressional intent is further indicated in the 1966 amendments to Section 6323 of the Internal Revenue Code of 1954 which, among other things, require the re-filing of notices whenever tax liens are extended beyond their usual six-year limitation period by the execution of statutory waivers.

III. It is inconceivable that the decision of the District Judge in this case, which prevented petitioner under a most singular set of circumstances from imposing a gross injustice upon respondents Carlson, should be asserted as adverse precedent with respect to lien notices in four other States, which, *after Union Central, supra,* adopted versions of the Uniform Federal Tax Lien Registration Act which are in no way similar to the 1923 Michigan statute.

The Michigan statute reviewed by this Court in *Union Central* was repealed 13 years ago and it is not likely that the decision of the District Court will affect other Michigan land titles. This Court, if it were to grant certiorari in this case, would not be in a position to render a decision which would determine the validity of the post-*Union Central* filing statutes referred to by petitioner. If anything, land titles in the States involved would become more clouded.

Respondents Carlson pray that this Court choose between petitioner who, through its agents, exhibited a great degree of laxity in collecting taxes owed by Donnelly, and respondents Carlson who, as innocent purchasers of real property in reliance upon Michigan law as known for almost 40 years, find their ownership jeopardized by the tax liabilities of a virtual stranger long deceased. The decision of the District Court, and the affirmance by the Court of Appeals, are based upon sound application of legal principles and a proper regard for justice and equity. "Even the most solicitous regard for the protection of Federal revenues does not counsel a policy of tax collection at the expense of non-liable third parties." *U.S.* v. *Lebanon Woolen Mills Corp.*, D. C., N. H., 241 F.Supp 393 (1964), at 399.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: June 1969.

Respectfully submitted,
PEVOS & PEVOS
(Daniel N. Pevos)
Attorneys for Respondents Carlson

APPENDIX A

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) Invalidity of Lien Without Notice. — Except as otherwise provided in subsections (c) and (d), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under state or territorial laws. — In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) With clerk of district court. — In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

* * * * * * *

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 104

UNITED STATES OF AMERICA, PETITIONER

v.

ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (A.51–57) is reported at 295 F. Supp. 557. The court of appeals' order affirming the judgment of the district court (A.58) is reported at 406 F. 2d 1065.

JURISDICTION

The judgment of the court of appeals (A.58) was entered on January 10, 1969. On April 4, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including May 10, 1969. The petition for a writ of certiorari was filed on May 10, 1969, and was granted on October 13, 1969. (A.63). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under this Court's decision in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291 (holding that the relevant State statute did not "authorize" the filing of appropriate federal tax lien notices in a State office), the government's tax lien was properly filed in the federal district court under Section 3672(a) of the Internal Revenue Code of 1939, and thus was entitled to priority over the interest of a subsequent purchaser of real property.

STATUTES INVOLVED

Sections 3670, 3671 and 3672(a) of the Internal Revenue Code of 1939, and Act 104, Public Acts of Michigan of 1923, are set forth in Appendix A, *infra*, pp. 17–19.

STATEMENT

In 1950, the Tax Court of the United States determined that the taxpayer, Thomas S. Donnelly, Sr., of Detroit, Michigan, was liable for income taxes and penalties totaling approximately $26,000 for the years 1943–1945. Upon assessment of these liabilities, there was created a lien "in favor of the United States upon all property and rights to property, whether real or personal," belonging to the taxpayer (Section 3670, Internal Revenue Code of 1939; see Section 6321, Internal Revenue Code of 1954).

Section 3672 of the 1939 Code provided that the government's tax lien would be valid against a subsequent purchaser of the taxpayer's property only if notice of the lien had been filed in a State office in which the filing of such notice was authorized by State

law, or, if filing in a State office was not so authorized, in the office of the Clerk of the United States District Court for the district in which the property was located (compare Section 6323, Internal Revenue Code of 1954).

At the time of the assessments against the taxpayer in this case, the Michigan statute purporting to authorize the filing of federal tax lien notices with the county registers of deeds required that the notice of a lien on real property contain "a description of the land upon which a lien is claimed" (Act 104, Public Acts of Michigan of 1923, Appendix A, *infra*, pp. 18–19). Because of this description requirement, which was found to be an impermissible obstacle to the enforcement of federal tax liens, this Court ultimately held in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, that the Michigan statute did not "authorize" a filing in a State office within the meaning of Section 3672.

The Treasury Department refused to acquiesce in the Michigan requirement that real property be described in the notice; its practice throughout the country was and is to use a form of notice which does not contain a description of any particular property subject to the lien.[1] In the present case, notice of the lien

[1] On September 10, 1953, subsequent to the filing in this case, the Attorney General of Michigan issued an opinion (No. 1709), Appendix B, *infra*, holding that the form used by the United States Treasury for filing tax liens did not comply with the provisions of the Michigan statute in that the form of the notice did not contain a description of the land upon which the lien was claimed. He therefore concluded that it was not entitled to recordation in the office of the register of deeds of any county of Michigan.

was therefore not filed in the office of the Register of Deeds of Livingston County, where the land in dispute is situated. A standard notice of the lien was filed, however, in November, 1950 with the Clerk of the United States District Court for the Eastern District of Michigan; another notice, with respect to the taxpayer's personal property, was filed with the Register of Deeds of Wayne County, Michigan, where the taxpayer resided (A. 52).

The taxpayer and his wife had acquired the Livingston County property in 1949 as tenants by the entireties. In August, 1960, shortly after the taxpayer became sole owner of the property upon the death of Mrs. Donnelly, he conveyed it to respondents, Oscar A. and Genevieve S. Carlson, for the sum of $15,250 (A. 52).[18] The purchase was consummated after an abstract of title prepared by the Livingston County abstract office disclosed no notices of tax lien on file with the Register of Deeds affecting real property owned by Mr. Donnelly (A. 30). The abstract, which explicitly disclaimed any examination of federal court records also was examined for respondents by a law firm which passed upon the marketability of their title to the property (*ibid.*).

In 1961, the taxpayer executed a second statutory waiver, extending the time for collection of the tax liabilities to December 31, 1966. He died intestate on January 13, 1963, and a petition for the appointment of an administrator was filed by the government with

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[18] Respondents alleged, and the district court noted, that they had expended more than $25,000 on improvements and repairs to the property (A. 13, 52 n. 2).

the Wayne County Probate Court on December 30, 1966 (A. 53).

On the same day, the government instituted this action in the district court to foreclose its tax lien on the real property located in Livingston County (A. 3–8). Respondents moved for summary judgment, contending that their title to the Livingston County property was entitled to priority over the government's tax lien because the government had failed to file notice of the lien with the Register of Deeds in Livingston County (A. 22–24). The government—relying on this Court's holding in *United States* v. *Union Central Life Ins. Co., supra,* that the Michigan statute did not "authorize" a filing in a State office—argued that its notice of lien was properly filed in the federal district court, and that its lien was therefore entitled to priority over the subsequent title of respondents (A. 55).

The district court concluded that *Union Central* was distinguishable and, in all events, inapplicable in the circumstances of this case, and granted summary judgment in favor of respondents (A. 57). The court of appeals affirmed the judgment, by order, "for the reasons set forth in the opinion of [the district court]" (A. 58).

ARGUMENT

INTRODUCTION AND SUMMARY

The question whether the government's notice of tax lien was properly filed in the federal district court in this case is, we submit, controlled by this Court's decision in *United States* v. *Union Central Life Ins. Co., supra.* The applicable federal statute in both cases, Section 3672(a) of the Internal Reve-

nue Code of 1939, provided that a federal tax lien would be valid against any mortgagee, pledgee, purchaser, or judgment creditor if notice thereof had been timely filed (1) in an office in which the State or territory where the property is located "has by law authorized the filing of such notice * * *" or (2) if the State or territory "has not by law authorized the filing of such notice in an office within the State or Territory" in the office of the Clerk of the United States District Court for the district in which the property subject to the lien was located. In both *Union Central* and this case the government filed its timely notice of tax lien in the federal district court because the Michigan statute purporting to authorize the filing of such notices required that the notice contain "a description of the land upon which a lien is claimed." Since the standard form of notice of lien used by the Internal Revenue Service throughout the country has not attempted to describe the property that might be encumbered by the lien, the Service determined that the Michigan statute was not a proper authorization for the filing of its notices and that federal court filings were necessary in Michigan in order to assure coverage of any real property owned by a delinquent taxpayer. This Court in *Union Central* sustained the government's position and held that the filing in the federal district court satisfied the requirement of Section 3672(a).

The Court's decision in *Union Central* can mean nothing less than that other liens, recorded in the federal courts at a time when the State statute re-

quired a description of real property, similarly were properly perfected under federal law. As we show *infra*, there is no merit in the view of the courts below that this case is distinguishable from *Union Central*. Nor is there any basis for the conclusion of the courts below that *Union Central* applies only to cases in which the competing interest in the property arose after the announcement of that decision. The square holding of *Union Central* is that State filings were not authorized by the Michigan statute. Accordingly, federal court filings while the Michigan statute was in force are valid irrespective of the dates of filing or of the creation of the subsequent interest.

UNDER THIS COURT'S DECISION IN UNITED STATES v. UNION CENTRAL LIFE INS. CO., THE GOVERNMENT'S TAX LIEN WAS PROPERLY FILED IN THE DISTRICT COURT AND THUS ENTITLED TO PRIORITY.

1. *Union Central* involved a notice of federal tax lien against delinquent Michigan taxpayers filed in a federal district court in 1954. Several months after the government's filing, the taxpayers executed a mortgage on certain real property, which was recorded in the office of the county register of deeds in accordance with Michigan law. The mortgagee subsequently instituted a foreclosure action in a Michigan court and joined the government as a defendant, claiming that its mortgage was entitled to priority because notice of the tax lien had not been filed in the office of the register of deeds where the Michigan statute purported to authorize such filing.[2]

[2] Act 104, Public Acts of Michigan of 1923, Appendix A, *infra*, pp. 18–19.

The government argued that its federal-court filing was proper because the Michigan statute did not authorize the filing of federal tax lien notices in a State office within the contemplation of Section 3672, since it required that such notice describe the real property on which a lien was asserted. The Supreme Court of Michigan held that the federal lien was subordinate to the mortgage. This Court reversed, holding (368 U.S. at 296) that

> The Michigan law authorizing filing only if a description of the property was given placed obstacles to the enforcement of federal tax liens that Congress had not permitted, and consequently no state office was "authorized" for filing within the meaning of the federal statute. It was therefore error for the Michigan courts to fail to give priority to the Government's lien here, notice of which had been filed in the District Court in accordance with federal law.

The present case is identical with *Union Central* in all material respects. Here, as in *Union Central,* the same Michigan statute permitted the filing and recordation of a federal tax lien notice only on the condition that the notice contain "a description of the land upon which a lien is claimed." Here too, the government, consistent with its administrative practice, refused to comply with that condition and filed its notice of lien in the federal district court under the alternative procedure specified in Section 3672(a)(2). The issue in both cases was whether filing in a State office was "authorized" within the meaning of the

Internal Revenue Code of 1939.[3] In the absence of such authorization it is clear that the government did all that was required to give its lien priority.[4]

Although it had been assumed that that issue was dispositively settled in *Union Central,* the district court in the present case found a path to a different result, and the court of appeals endorsed it. We submit that both courts went astray.

2. The court below found *Union Central* distinguishable because in that case the government had attempted a State filing of its standard notice, which was rejected by the register of deeds, while in the instant case there was no allegation that a State filing was attempted and rejected (A. 55). Both the factual and legal premises of this asserted distinction, however, are erroneous. Although the parties stipulated in *Union Central* that it was the policy of the register of deeds not to accept a lien notice which did not describe real property (see 368 U.S. at 293), we can

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[3] We agree with the district court's apparent conclusion that the provisions of the 1939 Code apply in this case. The effectiveness of the government's filing in 1950 is, of course, governed by the 1939 Code, and in the absence of any statutory limitations period on the effectiveness of the filing (compare Section 6323(g)(3) of the 1954 Code, 26 U.S.C. (Supp. III), 6323(g)(3)), the lien remained in effect, according to the filing, at the time respondents purchased the property and at the time the government instituted this action.

[4] Since the tax lien notice in this case was filed in the district court almost ten years before the respondents purchased the property, it is clear that the tax lien should be accorded priority over the respondents' title to the property under the settled principle that "the first in time is the first in right". *United States* v. *New Britain*, 347 U.S. 81, 85–87.

find nothing in this Court's opinion or in the briefs and record of the case which indicates that an unsuccessful State filing was actually attempted; indeed, such an attempt would have been most unlikely since the lien notice was filed after the Michigan Attorney General had ruled that the standard federal tax lien notices were not entitled to be recorded (*ibid;* Transcript of Record, No. 52, October Term, 1961, pp. 9–10). In all events, an unsuccessful attempt plainly would not have afforded any more effective notice of the lien to the mortgagee in *Union Central* or to the purchasers here.

The district court's reliance on the failure to attempt a State filing most likely rests upon a supposition that the county register of deeds might have accepted and recorded a notice if tendered. That possibility is legally irrelevant, however, for, in this posture, the district court's decision purports to overrule *Union Central* rather than distinguish it. Since the Michigan statute—as construed by this Court in *Union Central*—did not "authorize" the filing of notices in a State office, it follows under Section 3672 that the federal court filing satisfied the perfection requirement. Section 3672 required the government to file either in a State office or in a federal district court, but not in both. It is plainly inconsistent with *Union Central* to refuse to give effect to a properly recorded notice of lien merely because the government failed to take some step which it did not have to take and which was not authorized by the State law.[5]

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[5] Accordingly, it is irrelevant to the disposition of this case that the Service filed a notice of lien against the taxpayer in

The district court alternatively held (A. 55–57) that *Union Central* was inapplicable in the circumstances of this case because respondents had purchased the property prior to the decision in *Union Central*, at a time when there was "every indication" that the Michigan statute would be upheld as a valid authorization for filing federal tax lien notices. Although the court did not expressly so state, it ruled, in effect, that the holding in *Union Central* was to be applied only to cases in which the competing interest in the property arose after the announcement of that decision. This position is without merit. The situation of the mortgagee in *Union Central* was identical to that of the

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Wayne County in 1950, a fact on which the district court relied in suggesting that the Register of Deeds in Livingston County might have accepted the Service's notice (A. 55). The record does not reveal any of the circumstances of the Wayne County filing, although we are informed that such State filings occasionally were made where the Register of Deeds would accept the Service's notice, limited to personal property. The fact that one register of deeds was willing to accept the federal notice at that time does not affect the significance of the Michigan Attorney General's subsequent ruling that such notices were not entitled to be filed and recorded; rather it suggests that in all probability the county registers of deeds applied differing policies toward federal notices, thereby producing inconsistent results in a situation where uniformity is essential. More importantly, the Service correctly determined that a federal court filing was in all events necessary to obtain coverage of any real property.

It is similarly immaterial that the Service filed notices in Livingston and Genesee Counties in 1961, after the Michigan statute had been amended to authorize the filing of federal notices (see A. 5). Those filings, for whatever reason made, added nothing to the effectiveness of the lien which, as *Union Central* holds, was properly recorded in the district court in 1950.

respondents here. Surely, irrespective of this Court's decision in *Union Central,* it would upon the facts of this case apply the same principles of law and reach the same conclusion. Yet, the result of the court of appeals' rationale is that the government's security status is weakened rather than strengthened by the *Union Central* decision—a result which is hardly supportable. Indeed, it would place a premium on disorderliness in the administration of federal law if the government were to be penalized, as the district court in effect ruled, for adhering to a position which ultimately was confirmed by this Court.

There is nothing in the *Union Central* opinion, moreover, which even remotely suggests that the Court contemplated a departure from the general principle that its authoritative announcements of the federal law would thereafter be applied in all cases arising under the statute.[6] Aside from the conceptual difficulties inherent in a rule that the validity of a lien notice is determined not when it is filed but as of the time when a private party subsequently obtains an interest in the property, the district court's conclusion that respondents justifiably relied on an erroneous rule announced in the Sixth Circuit prior to *Union*

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[6] See, *e.g.*, *Geiger's Estate* v. *Commissioner*, 352 F. 2d 221 (C.A. 8), certiorari denied, 382 U.S. 1012; *United States* v. *Siano*, 356 F. 2d 927 (C.A. 2); and *Nerem* v. *Commissioner*, 41 T.C. 338, all of which held that *James* v. *United States*, 366 U.S. 213 (holding that embezzled funds constituted taxable income to the embezzler) applied to funds that were embezzled prior to the *James* decision.

Central is quite unpersuasive.[7] A detailed analysis of the legislative history led this Court to conclude in *Union Central* (368 U.S. at 294–296) that Congress had clearly stated in committee reports going back to the early 1940's—as well as in the statute itself—that the States are authorized to designate only the appropriate *place* for filing tax lien notices and never their *content*. Cf. *Jones* v. *Liberty Glass Co.*, 332 U.S. 524, 533–534. In addition, the Court in *Union Central* also noted that the government consistently refused throughout the relevant period to conform to the Michigan requirement concerning the description of real property (368 U.S. at 293, 295–296). Indeed, the necessity for Michigan title searchers and lawyers to check

[7] Compare *Linkletter* v. *Walker*, 381 U.S. 618, 636. The district court's reliance on *National Labor Relations Board* v. *Rockaway News Co.*, 345 U.S. 71, *and Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371, is misplaced. *Chicot County* involved the rights of bondholders which had been determined in a prior judicial proceeding under a federal statute that was subsequently declared unconstitutional. The Court determined that the actual existence of the statute and the proceeding which was conducted under it could not be ignored and that the principle of *res judicata* should be applied. In *Rockaway* the Court cited *Chicot County* for its approach to the question of the effect of an unconstitutional statute prior to its being held unconstitutional; the Court held that the Labor Board could not ignore a labor contract which was subsequently declared invalid in determining whether an employer's conduct pursuant to the contract constituted an unfair labor practice. The effect, if any, to be given to respondents' erroneous conception of the law in the present case does not involve any of the considerations applicable to the parties' reliance on an earlier judgment or to the determination of an employer's motivation in the context of a Labor Board proceeding.

the lien indexes in the federal courts, in view of the government's response to the Michigan statute, was well recognized several years before respondents purchased the property in this case. Wright, *Title Examinations in Michigan as Affected by the General Federal Tax Lien*, 51 Mich. L. Rev. 183, 192–198 (1952).[8]

3. The decision below presents a significant admin-

[8] In view of the grounds on which the decision below was based, neither the district court nor the court of appeals found it necessary to reach respondents' additional contentions that the tax lien was defective because (1) the government failed to file notice in the State office after 1956, when the legislature enacted a new filing statute that repealed the invalid requirement for description of real property, and (2) the government failed to file notice of its lien (in the State office) in 1960 upon the death of Mrs. Donnelly when, respondents argued, the property first became subject to the lien. The first contention concedes that the lien was properly filed in the district court in 1950, but assumes that the government has a continuing duty to respond to any change in State law by refiling in a newly-authorized State office all notices which had properly been filed in the district court. In *In re Dartmont Coal Co.*, 46 F. 2d 455 (C.A. 4), the court persuasively reasoned that Congress had not intended to impose such an unusual administrative burden on the government to preserve the effectiveness of its liens. Were the State of Michigan to attempt to impose a requirement that all tax liens filed at a certain time in a certain place be refiled by a certain time in a different place in order to retain their validity, such an attempt would obviously amount to a State-imposed "obstacle" which *Union Central* forbids. Assuming *arguendo* that the government could not foreclose on the lien until the taxpayer became sole owner of the property at his wife's death, respondents' second contention is completely inconsistent with this Court's decision in *Glass City Bank* v. *United States*, 326 U.S. 265, that the government's tax lien attaches not only to property which the taxpayer owns at the time notice of the lien is filed but also to property subsequently acquired by the taxpayer during the life of the lien. It would be extraordinarily difficult for the government to monitor the affairs of every delinquent taxpayer and file successive notices of lien every time

istrative problem for the Internal Revenue Service. The rationale announced by the district court and adopted by the court of appeals is applicable not only to notices of liens filed in the federal district court in Michigan prior to August 11, 1956 (the effective date of the repeal of the Michigan statute, see 368 U.S. 292–293; Michigan Public and Local Acts of the Legislature (Regular Session, 1956), No. 107, pp. 213–214, 737),[9] but also to federally filed notices in several other States. The Internal Revenue Service advises that the adoption of the 1962 version of the Uniform Federal Tax Lien Registration Act in Pennsylvania, Massachusetts, and Wisconsin[10] resulted in federal court filings in those States that might be invalidated under the district court's reasoning, which presumably would be applicable to the 1954 Code as well as the 1939 Code; notices filed in Illinois between 1966 and 1967 also may be affected.[11] In sum, the validity of approximately 40,000 notices filed in the district courts in five States has been clouded by the decision in the instant case, with resulting uncertainty of land titles

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a taxpayer acquires a significant piece of property on which the government might be required to execute in order to liquidate the taxpayer's liability.

[9] The applicability of the Michigan statute involved here in a case where the taxpayer's estate contained only personal property is pending before this Court on petition for a writ of certiorari in *United States of America* v. *Henry Falk*, No. 844, this Term.

[10] The 1962 Lien Act is still in effect in Massachusetts and was in effect for two years in both Pennsylvania and Wisconsin.

[11] See, *e.g.*, Rev. Rul. 64–170, 1964–1 Cum. Bull. (Part 1) 499, amplified by Rev. Rul. 64–252, 1964–2 Cum. Bull. 497, modified by Rev Rul. 66–63, 1966–1 Cum. Bull. 287; and see Rev. Proc. 67–15, 1967–1 Cum. Bull. 592, superseded by Rev. Proc. 68–1, 1968–1 Cum. Bull. 741.

for the public as well as potential injury to the government.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed and the cause remanded to the district court.

Respectfully submitted.

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APPENDICES

APPENDIX A

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal belonging to such person.

[26 U.S.C. (1952 ed.) 3670.]

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

[26 U.S.C. (1952 ed.) 3671.]

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, 882, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798, 957] VALIDITY AGAINST MORTGAGES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial laws*—In the office in which the filing of such notice is

authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; * * *

* * * * *

[26 U.S.C. (1952 ed.) 3672.]

Michigan Public Acts, 1923, No. 104, as amended by Michigan Public Acts, 1925, No. 13:

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States.

The People of the State of Michigan enact:

Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county

or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens", indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred and eighty-six of the revised statutes of the United States.

APPENDIX B

Opinion of the Attorney General of Michigan, No. 1709, dated September 10, 1953 (Biennial Report, pp. 216–217, of the Attorney General of Michigan (1952–1954)):

FEDERAL TAX LIEN NOTICE—REGISTER OF DEEDS.—Federal tax lien notice claiming lien on all property of taxpayer not entitled to recordation where it does not describe land on which lien is sought.

September 10, 1953.

No. 1709
Mr. JOSEPH E. KILLIAN,
Prosecuting Attorney, Berrien County,
Commercial Bank Building,
St. Joseph, Michigan

DEAR SIR: You have presented for my opinion the following question:

"Is a notice of federal tax lien, issued pursuant to 26 U.S.C.A. section 3672, entitled to recordation in the office of a county register of deeds where it omits to describe the land of the taxpayer against whom the lien is sought?"

The federal law (26 U.S.C.A., § 3672) requires that notices of tax liens be recorded in accordance with the laws of the particular state where provision has been made for filing of such liens.

Pursuant to federal law, Michigan provided for the filing of such liens by Act No. 104 of the

Public Acts of 1923 (C.L. 1948, § 211.521 [Stat. Ann § 7.751]).

This act provides as follows:

"That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

This section has been considered in various federal court cases, including *Youngblood* v. *United States,* 141 F (2) 912, and has been declared to be reasonable and that federal tax notices must comply with its terms in order to be recorded. The act requires that any land against which a lien is sought shall be described but does not require any description in the case of personal property.

You have supplied me with a copy of Treasury Department Form No. 668, which you advise is the form used to file for liens. This form recites in part as follows:

"Pursuant to the provisions of Section 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there has been assessed * * * against the following-named taxpayer, taxes (including interest and penalties) * * * and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, * * * is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to the taxpayer, * * *."

Since the form of notice used claims a lien on all property of the taxpayer and does not contain a description of any land, the notice is not entitled to recordation since it fails to comply with the provisions of Act 104 of the Public Acts of 1923, as set forth above.

Yours very truly,

FRANK G. MILLARD,
Attorney General.

U.S. GOVERNMENT PRINTING OFFICE: 1969